

**VIA ELECTRONIC MAIL**

April 17, 2009

Ms. Elizabeth Murphy  
Secretary  
US Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

RE: File No. SR-FINRA-2009-008  
Proposed FINRA Rule Changes to Forms U4 and U5

Dear Ms. Murphy:

Allow me to comment regarding the above-referenced proposal. In general, we agree with proposed changes to make it easier to amend Form U-5 filings as to the date and reason of termination, because often when changes are necessary, it has been due to a legitimate human error. In addition, the technical amendments to convert "free text" fields to discrete fields on DRPs of Forms U4 and U5 are appreciated. Often times if the free text field was not as detailed as the DRP specialist reviewing the matter wanted, additional information would have to be obtained and additional filing fees would be assessed each time.

The following is a summary of our specific comments on other aspects of the proposal rule that we feel are problematic:

1. The proposal is seeking to expand the statutory disqualification criteria. It proposes to add a new Question 14C(6) to elicit whether the SEC or CFTC ever found the person to have "willfully violated" any provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the MSRB, or found the person to have been unable to comply with any provision of such Act, rule or regulation. An identical question will be added to Question 14E in the context of findings by any SRO. The proposal is not clear as to what is meant by the term "willful violation." Firstly, how are firms supposed to make this determination? For instance, must this term be specifically mentioned in a proceeding or is it intended that firms must make the determination themselves? Are there any minimum thresholds? For instance, what if a Registered Representative ("RR") borrowed money from an investor without the firm's consent (violation of an SRO rule), but it was a de minimus, non-material amount (e.g., \$25), would this be considered a "willful violation" that merits an affirmative response to this question? Even our own

US legal system has varying levels of judgment (misdemeanor vs. felony) depending on the severity of the crime, even though all are considered violations of the law. Secondly, the determination of "willful" is a very subjective determination and may result in different conclusions depending on the person making the assessment. We propose that FINRA consider requiring the recording of affirmative answers to these new questions only when the Form U6 has been amended by a regulatory authority to specifically indicate "willful" and at that time, FINRA could automatically change the RR's answer to the question to the affirmative and reduce the burden and subjective nature of the determination.

2. The proposal suggests that updating an RR's information to reflect answers to the new DRP questions would need to occur immediately when filing a U4 amendment and no later than 120 days following the effective date of the rule. Updating all of our RR's U-4s (over 500) within this proposed timeframe would create a substantial administrative burden for our firm. The new questions are not ones that can be easily answered without significant review of the original filings. The support for these past violations may or may not be records that are still readily available. In addition, would the change require a "wet" signature from each and every RR? If so, this would also cause substantial administrative burden and perhaps cause undue delay in filing other amendments that do not typically require a wet signature. Many firms require RRs to complete an Annual Compliance Questionnaire by year end whereby such questions relating to disciplinary issues are posed. We propose that FINRA provide firms until January 31, 2010 in order to systematically collect and report the information. In addition, giving firms the ability to upload this information to WebCRD, perhaps via an Excel spreadsheet, would be very helpful in increasing efficiencies.
3. Under the section entitled "Proposed Revisions to Clarify the Manner in Which Individuals and Firms Must Report Sales Practice Violations Alleged Against Registered Persons," the proposed rule change would make additional revisions to Questions 14I on Form U4 and 7E on Form U5 to "...further clarify the manner in which individuals and firms must report allegations of sales practice violations against registered persons made through arbitration or civil litigation or through consumer-initial complaints." Our concern is that the words "written or oral" would be added to the questions to describe an investment-related consumer-initiated complaint, "...to reflect FINRA's longstanding interpretation that, for purposes of this question, a consumer-initiated complaint can be either written or oral format." This important clarification was relegated to a footnote in the proposal and no citation was provided to substantiate the "longstanding interpretation." We are very concerned that FINRA is effectively expanding on the general definition of a complaint as found in Rule 3070(c) and it would represent a significant change to the scope of the current reporting requirements. In addition, requiring the reporting of oral complaints as it relates to these particular questions would present significant challenges as follows:

- To whom would the oral complaint need to be made in order to trigger reporting? The registered representative, their sales/service assistant, branch manager, home office employee, etc.?
- Registered Representatives in today's volatile market routinely receive oral complaints and often they are due to misunderstandings that typically are resolved immediately during the conversation.
- One would have to rely on the memory and sole interpretation of the listener receiving the complaint to differentiate between a complaint and simply a misunderstanding or inquiry.

Requiring a reporting and recordkeeping process for oral complaints would be burdensome due to the various uncertainties as described above. In summary, any customer who is not satisfied with the outcome of their verbal inquiry will reduce their complaint to writing, and we encourage them to do so. Therefore, we strongly urge that you require the reporting of only written complaints and strike the reference to "oral" complaints.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 215-881-4522.

Respectfully submitted,



Nancy L.H. Boyd, CRCP  
Director of Compliance